



Town of Tyngsborough
 Zoning Board of Appeals
 Town Hall-25 Bryants Lane
 Tyngsborough, Ma 01879-1003
 (978) 649-2300, Ext. 112

APPROVED

Board of Appeals Meeting Minutes for April 14, 2011

Members present: Robb Kydd, Chairman, Chris Mechalides, Vice Chairman, Cheryl Bradley, Claire Cloutier, Joseph Polin, and Donna McPartlan, Administrative Assistant. Scott Bordeleau was not in attendance.

6:30PM: Meeting called to order by Chairman Robb Kydd

1st Hearing: Michael J. McNeill and Mary Ann T. Callahan – 7 Palomino Drive.;
 Assessors Map 15, Lot 1-25; request a Variance of Section 2.12.47 of the Zoning By-Law to remove existing 100 sq. ft. deck, construct 398 sq. ft. screen porch for residential/personal use in an R-1 Zone.
Advertised in the Lowell Sun on Thursday, March 24, 2011 and Thursday, April 7, 2011.

Members hearing and voting on first hearing Robb Kydd, Claire Cloutier, Cheryl Bradley, Joe Polin and Scott Bordeleau.

Motion to waive abutters list. No abutters were present for or against the applicant.

Michael J. McNeill represented the applicants; Mary Ann T. Callahan was not present.

They want to take down the existing deck that needs to be replaced and replace it with a screen porch that wraps around the house encroaching on the neighbor's lot line. Because of the layout of the lot, along with existing landscaping and it's the most feasible way to do it with no windows needing to be relocated and it's the portion of the yard that is not utilized due to the grade. They would like to come off the existing side of the house and come around the house. The abutter's house is closer to the street, not directly next to them. As you are looking at the house the screen porch would be on the back left corner, you will not even see it from the driveway.

The lots are 'bowling alley' shaped, they have over 2 acres of land, with the majority being in front and behind the house. Because of driveway easement for neighbors,

their house was pushed back on the lot. No notes from any abutters. They all received certified letters.

A Request for Comment returned “no comment” from the Highway Department, the Building Department and the Board of Health. Conservation Director Matt Marro’s comments were that the proposed addition will require a Request for Determination from the Conservation Commission due to the proximity to wetlands.

Chris Mechalides did a drive by site visit. Chris wanted to know if there were any other easements of utilities coming through the property. Water, gas and power have an easement following along the line of the driveway as well.

This will be just a screened porch with no heat, no glass, just screen; no bathrooms or bedrooms.

Discussion continues about the size and shape of the lot. Applicant states that the neighbor at 11 Palomino has a lot that goes as far back as the applicants, just getting narrower. Some of the properties on Appaloosa and Shetland which is the cul-de-sac behind them converge at a point in the back.

Motion to close public portion of the meeting by Chris Mechalides, Seconded by Joe Polin; Vote Aye; Motion carries unanimous.

Board members continue discussion about lot size and shape. The neighbor on the right has frontage on Mustang, but because of wetlands they were given an easement off of Palomino to access their property. It is Chris Mechalides opinion that to utilize a property today it has to have a screened in area. The alternative being to put a separate screen house out back but that convenience of a screened porch is better, however, convenience is no reason to allow a variance. The applicant must show a hardship; the hardship is the size of the lot, the way the house has been placed on the lot, the topography being the hardship in this case. Joe Polin agrees the hardship is also the layout of the lot. The applicant did consider putting the screened porch on the driveway side where there is slightly more room, but eventually they’d like to put a garage there.

Motion to **APPROVE** the request for variance subject to section 2.12.47 of the Tyngsborough Zoning By-Laws this will allow an addition of a screen porch to be placed on the left side of the house allowing for side yard relief of 11.4’ by Chris Mechalides, Seconded by Cheryl Bradley.

Robb Kydd	AYE
Cheryl Bradley	AYE
Claire Cloutier	AYE

Joe Polin AYE
Chris Mechalides AYE

5-0, Motion Carries – APPROVED

Robb suggests the applicant get the ball rolling with Conservation.

OTHER BUSINESS

Maple Ridge Affordable Apartments II, LLC – Second Regulatory Agreement for Phase II

Steve Kominski, Dakota Partners, discusses the Regulatory Agreement having to do with the fourth (4th) Apartment Building, yet to be built. The project was broken into two (2) phases, three (3) buildings and one (1) building. Three (3) buildings are complete now and they are getting ready to start construction on the fourth (4th) building. Dakota wants to just amend the Regulatory Agreement that the Board checked off on last time to increase to 96 units. Mass Housing is the subsidy agent that assisted in the two (2) separate regulatory agreements be constructed and signed off on because the units were purchased separately. The Mass Housing process has the Interim Regulatory Agreement to be completed before construction and a Regulatory Agreement for after construction. Steve brought the redline versions of the agreements that were already checked off on with changes of amount of units and amount of money involved and a few other things. In addition to that, the Board needed to sign off on the acknowledgement because the Comprehensive Permit was old and the local preference language was out of date. Dakota didn't need to change the Local Preference Language, only to acknowledge that it doesn't conform any more and that it just conforms to current guidelines. They have a new acknowledgement. The first phase they did the lottery which had 69 applicants of which only 14 were Tyngsborough residents. So obviously it didn't meet the local preference, not usually a big deal, but this is partially HUD financed and HUD has been kicking back on local preference in MA. They don't think the 70% is necessary they usually want less. The second (2nd) phase is also HUD financed so they want to have the board to acknowledge that local preference has already been achieved on this site. If you look at it as a single 96 unit project, if you want to break it into two (2) you have to do another lottery and go through that whole thing again which is not a big deal, however, Dakota has to go back to HUD and make a case that local preference is necessary and reflect back to the first lottery and clearly it was not. If you walk up there today you can rent a unit, it doesn't matter where you are from. There wasn't an overwhelming demand. Mass Housing had them construct two (2) acknowledgements to go with the Regulatory Agreement for the Board to sign tonight.

Chris Mechalides requests clarification that all of the applicants that were residents that applied and qualified were able to get in. Steve said yes, that there were 14 in the lottery. It has increased significantly since then, there about 1/3 of the residents that are Tyngsborough Residents. 15 out of 69 and then subsequent to that there are 62 tenants now and 1/3 are Tyngsborough residents and didn't need the lottery to get in.

Steve said that the base rent is \$1,123.00. Robb wants to know what percent are paying \$1,123. Steve said that there are 72 units, 10% are called 30% units, with a base rent of \$525.00. That's 8 units. There is an overwhelming demand for those. Out of 69 in the lottery 25 applied for the 30% units and a good part of them didn't qualify because the rent is so low. The other rents are moving along like any other project would. He expects that they will be full by next month.

Robb wants clarification on the change of wording for Local Preference for the last 24 units. Steve said that they are making the case that Local Preference has been achieved. When they did the lottery they did not have enough Tyngsborough residents to invoke Local Preference. Robb asked if they'll need to do another lottery at some point. Steve Kominski explains that they do not, they can keep running off the same tenant base that they have. You can walk down there today and rent a unit. If you are a 30% renter, and you want to try to qualify for the 3 units in the new building, they still have a waiting list from the first lottery. Robb wants to know if they are only allowed to put so many in the buildings as part of the HUD financing deal. Steve said only 3 in the fourth building and 8 in the first 3. Mass Housing takes a couple for their own purposes; there were 3 in the first phase. There are probably about 10-15 people on the waiting list.

Robb wants clarification on how many are 30%, 60% or market rate. Steve explains that all units are affordable. Steve said if the units were market rate would be about \$200 more.

Robb wants clarification that Dakota does not want to do another lottery, just build it out, and have it complete in August or July.

Claire wants to know how many of the 30% are Tyngsborough residents. That's one of the things she'd like to discuss later is the Tyngsborough preference. She spoke with Marilyn <> of Housing Resource about the subject and Marilyn told her that with each phase there should be a lottery. And each Tyngsborough preference should be included with the lottery. Joe Polin wants to know if that's in the original agreement. Robb said it was a "general" preference, which is being challenged at the State level because it becomes discriminatory. Steve Kominski said it's being challenged by HUD, not as discriminatory, but that it's not necessary. In Dakota's project, \$1,100 you can go a lot of places that won't be as nice, but you can find another property for under \$1,100. They don't have a big waiting list and they have a lottery base too. When HUD sees that over and over again they challenge it. If they try to do another lottery and go back to Mass Housing to make a case for local preference they would need to figure out a number, usually 30% local preference but it would only affect those three (3) units so the same people would come in and apply. Tyngsborough residents go to the front. Most of the people in the 60% units make about \$4,300-\$4,700 and the people in the 30% make about \$2,200 - \$2,600.

Claire is interested in if any of the people on the waiting list are Tyngsborough residents. Steve said that because time passes, a lot of the people find something else, and a lot of the never qualify because

incomes aren't checked until they have a unit and they put a deposit down. They fall out at different levels.

Claire wants clarification on the 30% because there are Selectmen in town that don't believe any Tyngsborough residents got in, and they are fighting 40Bs. In addition, Tyngsborough residents are inquiring as to why they are not getting into these properties. Claire also mentions that she is an abutter. Robb requests Steve email statistical information to Donna McPartlan.

Chris notes that new people come along and forget or never listened to the ZBA meetings or see what they were doing and so in the case of Maple Ridge and 3 other properties on Middlesex Road, they are quick to note that there is an influx of children into town and the schools will be affected and what did the ZBA get? We got the sewerage and water brought in by the developers which benefits the town by each property coming in.

Steve Kominski notes that there was a concern about the number of children but when they broke ground we turned over a lot of the Town employees. Between the times they started coming in to the time they started building the Town manager turned over, the building inspector turned over and the school commission as well. When they broke ground they got a rash of phone calls saying they had no idea this was coming. The school department was concerned about the funds for the number of students and they are already through the school year. Steve has been charting this for them telling them exactly how many school aged children are in that complex. Totally built out there will be about 60 school aged children and half of them are already Tyngsborough residents so it will only grow the school system one (1) classroom. Sometimes the number of children in the school system fluctuates one or two rooms a year, up or down. There are kids there, which is the purpose of the housing units, for families.

Chris wants to know if there were documents that were provided to the school. Steve said that it's all been verbal and that he needed to get so many people in before he could make a projection. There are 62 units rented right now with 50 occupied and another 12 being moved in with 72 in total and they should be done shortly. Steve said it takes from the day they walk into the office about 60 days for a unit.

The people that pay 30% can't make more than 30% of the AMI in the town, which in this town is about \$25,000. Most people fall right up around there. If you income qualify you can move into one of those units if it's available, however, because the rent is so cheap the demand is great. There is another 10 on the waiting list. The first 3 buildings are occupied. There are 3 units left in the new building.

Claire said that the Housing Authority in Tyngsborough would like to place some of their people too, and Steve said that they reached out to the Housing Authority and they are elderly without Section 8 and they weren't that interested. Claire told him that's not true. It was because they didn't understand when that first happened a year ago. Since then they have been very active with trying to work with the 40Bs in town to get some of their people in.

One of the documents that Steve brought in was looking for the Board to say that they have already met Local Preference.

The information the board is looking for from Steve is how many Tyngsborough residents are in the 72 units and another number on if there are any that are in the 30% unit, no names, just information for the Board.

Steve would like this document signed soon so they can close on this. However, Robb said that without the information that the board is looking for they won't sign it. Chris wants Steve to send Conditions 8 & 9 of the Comprehensive unit to Donna McPartlan to forward to the board (conditions for local preference). Robb said they may be able to make a decision electronically if they have all the information, and they feel confident. Steve said this is Mass Housing and they are the subsidy agent and the monitoring agent and they can't close the loan until they do this. Another option would be if they brought the local preference back in and invoke a lottery and it gets stopped by HUD and then they all come back there and possibly have to reduce the local preference number.

Reading of Minutes from:

- March 2011 **APPROVED**
- February 2011 **APPROVED**
- January 2011 **APPROVED**
- October 2010 **APPROVED**

Unfinished Business

- 10 Shakespeare Street -- Foreclosed Unit at Maple Ridge

New Business

Mail:

- Memo re: Notification of Development Requests from Michael Gilleberto
- Request from Charles re: 40B Regulations
- Tyngsboro preference for 40Bs
- Tyngsboro Outdoor, LLC – First Installment Payment (2010)